

## Message

**From:** Pro Report [politicoemail@politicopro.com]  
**Sent:** 4/2/2018 9:49:39 PM  
**To:** Block, Molly [block.molly@epa.gov]  
**Subject:** Pro Report: The irony of Trump's Obamacare 'sabotage' — Ag, markets fear worst as China retaliates — EPA to change Obama-era car emissions standards

By Maggie Chan | 04/02/2018 05:47 PM EDT

**Good afternoon and welcome to Pro Report**, your daily rundown of the day's top policy news. I'm your host, Maggie Chan. Send feedback and song recs to [mchan@politico.com](mailto:mchan@politico.com) and follow me [@\\_maggiechan](#) on Twitter. Don't forget to follow [@POLITICOPro](#). "You gotta get ready for the big payback." Let's get started.

**THE IRONY OF TRUMP'S OBAMACARE 'SABOTAGE':** No, not Alanis Morissette "ironic," but actually ironic. Six months after President Donald Trump halted Obamacare's cost-sharing subsidies, "the troubled insurance markets appear more stable than ever, and many Obamacare customers benefited from Trump's decision in ways the law's supporters didn't expect," reports Pro Health Care's Paul Demko. Supporters of Obamacare thought halting the subsidy payments, which helped pay low-income customers' medical bills, would be the death knell for the health law. But while Trump's decision to stop the payments in October "prompted many insurers to hike monthly premiums by around 20 percent, ... Obamacare customers this year qualified for much larger premium subsidies that offset the rate hikes, enabling thousands to enroll in health plans with no monthly cost or to buy richer coverage."

"These seemingly perplexing changes in the marketplaces are tied to the way insurers dealt with huge premium increases resulting from the lost cost-sharing subsidies. The simplest explanation is that the law's monthly premium subsidies — a separate program not affected by Trump's decision — became much richer for low-income Americans," Paul explains. "Premium subsidies are tied to income, and the amount customers have to pay is capped regardless of price. ... Regulators in most states required insurers to load all of the resulting premium increases onto the most popular Obamacare plans, allowing low-income customers to receive higher monthly premium subsidies. ... The approach has had drawbacks though. Unsubsidized customers faced the full brunt of major premium spikes. And an analysis from the CBO last year estimated the decision to scrap the cost-sharing payments would drive up federal spending by nearly \$200 billion over a decade due to increased premium subsidies."

"Though lawmakers say they're open to more negotiations, cost-sharing payments are unlikely to be restored for 2019 health plans. No one may be happier about that than Families USA, a leading consumer advocacy group that has done a 180-degree shift since calling Trump's decision to scrap the payments the 'most destructive act of health care sabotage yet.' While the group believes Trump's move was motivated by his desire to damage Obamacare, it last month warned that reinstating the subsidies would mean 'millions of consumers would experience significant financial harm.'"

**AG, MARKETS FEAR WORST AS CHINA RETALIATES:** As the White House today complained about China's retaliation against Trump's steel and aluminum tariffs, agricultural groups and U.S. markets braced for the worst. Beijing today began imposing tariffs on more than \$3 billion in U.S. exports to China. A 15 percent tariff increase will hit American goods including fruit and nuts, while pork, recycled aluminum and other goods will see a 25 percent tariff increase. The U.S. pork industry hopes Trump will strike a deal with China to save its sales to the Chinese market, while citrus growers will now have a lot to talk about during a previously planned trip to Washington this week.

The markets were spooked again over trade worries. The Dow Jones Industrial Average fell more than 650 points at one point this afternoon while "analysts from Moody's Investors Service said escalating trade tensions sparked by tariffs from the U.S. has the potential to dampen an otherwise positive global economic growth outlook," report Pro Trade's Megan Cassella and Doug Palmer. "The announcement came during a quarterly teleconference held with investors last week." The Dow fell 420 points after Trump announced his steel and aluminum tariffs last month, and fell more than 720 points three weeks later when Trump announced he would hit China with more tariffs as retaliation for its intellectual property practices.

**How do you like them apples?** China's action "comes as the Trump administration is expected this week to publish a list of at least \$50 billion worth of Chinese technology products that could be hit with U.S. tariffs in response to alleged Chinese intellectual property theft and forced technology transfers," Doug adds. "Consequently, China's retaliation in the steel and aluminum dispute is probably intended to send a message in the technology case, one long-time China observer said. 'The Chinese are notorious for "pre-emptive retaliation,"' the source said. 'They often do not wait and wish to show strength quickly to try to deter future action.'" Former U.S. Ambassador to China Max Baucus, who now co-chairs the Farmers for Free Trade coalition, blamed Trump for provoking a trade war with China but urged both sides to de-escalate "both the trade rhetoric and actions that have brought us to a point where American farmers are being targeted."

**EPA TO CHANGE CAR EMISSIONS STANDARDS:** EPA Administrator Scott Pruitt today formally announced that the agency will revise Obama-era auto emissions regulations, report Pro Energy's Alex Guillén and Emily Holden. According to the EPA's determination, the current emissions standards for 2022-2025 model year cars and light trucks "are based on outdated information" and "may be too stringent." Pruitt's move "triggers a new round of notice-and-comment rulemaking to revise the standards for 2022-2025 model year cars and light trucks," Alex and Emily add. "A proposal describing the changes could come as soon as this summer, but the timeline is still unclear."

**What about the states?** "Those opposed to changing the standards, including California regulators and environmentalists who helped create the original rules, say weakening them will cost consumers more in the long run because of higher fuel usage. California is authorized to enforce higher standards inside its borders and in a dozen other states, raising the threat of automakers facing two sets of requirements," Alex and Emily note. Pruitt said in a statement announcing his decision that he wouldn't let California "dictate standards for the rest of the country" but did not go as far as saying he'd revoke California's waiver to enforce tougher emissions standards. "It is in America's best interest to have a national standard, and we look forward to partnering with all states, including California, as we work to finalize that standard," he said.

"California regulators have indicated they are unlikely to agree to any changes to the program unless EPA agrees to issue standards continuing to require more efficient vehicles for model years 2026-2030," Alex adds. And California's attorney general says he'll sue if Pruitt does revoke the waiver.

**TRUMP PRAISES SINCLAIR AS DOJ, FCC REVIEW ITS MERGER:** While his Justice Department and FCC are in the middle of reviewing conservative-leaning Sinclair Broadcast Group's proposed \$3.9 billion acquisition of Tribune Media, Trump today tweeted his support of Sinclair. "So funny to watch Fake News Networks, among the most dishonest groups of people I have ever dealt with, criticize Sinclair Broadcasting for being biased. Sinclair is far superior to CNN and even more Fake NBC, which is a total joke," Trump tweeted. "Trump came to the broadcaster's defense after a viral video showing dozens of TV anchors at Sinclair-owned stations reciting the same Trump-like script bashing the media for spreading 'fake news,'" report Pro Technology's Margaret Harding McGill and John Hendel. While Trump didn't tweet about the deal, opponents of the merger say Trump's remarks mean regulators are all but certain to give a green light.

The DOJ and FCC "are reviewing Sinclair's bid to buy Tribune's stations, which would allow the company, known for injecting must-run conservative segments into local stations' programming, to reach nearly three out of every four households in the U.S. The reviews, however, have taken longer than expected, with Sinclair

revising the deal several times and committing to sell off some of the TV stations it wanted to buy after discussions with regulators. ... Sinclair has faced criticism over reports that it gave favorable treatment to Trump while airing negative stories about Hillary Clinton during the 2016 election. POLITICO reported shortly after the election that Trump son-in-law and adviser Jared Kushner boasted that the campaign had struck a deal with Sinclair for better media coverage. (Sinclair has disputed the characterization, saying it was an arrangement for extended sit-down interviews offered to both candidates.)"

**HOW TRUMP KILLED SHUSTER'S FAA OVERHAUL:** Trump last summer gave a full-throated endorsement of House Transportation Chairman Bill Shuster's (R-Pa.) plan to break off air traffic control of the FAA, calling it a plan that would save America from "an ancient, broken, antiquated, horrible system that doesn't work." But the plan is dead less than 10 months later, and sources told POLITICO that what killed the bill was Trump revoking his support. "Shuster asked Trump during a Feb. 14 meeting to help him sway about a dozen wavering Republican lawmakers to support the legislation, even providing a list of names, according to two people familiar with the meeting's details. After a week of silence, White House officials broke the news to Shuster that no help was coming — and Trump no longer endorsed the plan," report Pro Transportation's Lauren Gardner and Kathryn A. Wolfe. "Without the White House to help cajole and twist arms, Shuster decided to pull the plug on the bill, H.R. 2997 (115), those sources said."

"It's unclear why the administration pulled the rug from under the FAA bill, which the White House had also embraced in two budget proposals. But a third airline lobbyist said the White House had never put any real effort into pushing for the legislation behind the scenes, which was needed to shift the political dynamics that already had been at play for over a year. Shuster laid the blame for the FAA bill's demise squarely at Trump's feet. 'My Democratic opponents, we were gonna get some of them on board; Republicans in the House, a number of them that wouldn't go with me,' he told reporters on March 14. 'Leadership was great with it; in the Senate we have Republicans [who opposed it]. And then for some reason, at the eleventh hour, the White House decided somewhere there, they decided they weren't going to be for it.' Asked about why Trump seemingly reversed his support, a White House aide said he still 'supports transforming the ATC system' but didn't address Shuster's proposal specifically."

**W.H. CHANGES TUNE ON WHETHER SHULKIN RESIGNED:** The White House is backtracking from its initial assertion that former Veterans Affairs Secretary David Shulkin "resigned from his position." The administration now says Shulkin was offered "the opportunity to resign," as Shulkin continues making the rounds in the news media and saying he was fired. "The dispute raises the stakes in an obscure, but potentially consequential debate over President Donald Trump's ability to appoint Shulkin's replacement," writes POLITICO's Andrew Restuccia.

"Trump bypassed Shulkin's deputy when naming his interim successor, which potentially ran afoul of the Federal Vacancies Reform Act of 1998. That law only gives the president broad authority to temporarily fill a vacancy at a federal agency with an acting official if the current office holder 'dies, resigns, or is otherwise unable to perform the functions and duties of the office.' ... Some legal experts note that the Vacancies Act does not explicitly grant the president authority to hand-pick replacements in the case of firings. That could make Trump's decision to appoint [Robert] Wilkie, the undersecretary of defense for personnel and readiness, as acting VA secretary a potential test of the president's authorities under the act. And it could lead to potential legal challenges if Wilkie stays on as acting secretary for an extended period of time while the Senate considers his nominee to permanently hold the position, White House physician Ronny Jackson."

## CALENDAR FOR TUESDAY

— 1:35 p.m.: Trump holds a joint news conference with Estonian President Kersti Kaljulaid, Latvian President Raimonds Vējonis and Lithuanian President Dalia Grybauskaitė after a summit with the leaders. Acting Secretary of State John Sullivan will also attend the meeting. White House.

— 4 p.m.: Sullivan meets with Moroccan Foreign Minister Nasser Bourita. State Department.

— 4:05 p.m.: Commerce Secretary Wilbur Ross delivers remarks at the U.S. Chamber of Commerce's U.S.-Baltic Business Summit. 1615 H St. NW.

**That's all for today.**

*To view online:*

<https://www.politicopro.com/newsletters/pro-report/2018/04/the-irony-of-trumps-obamacare-sabotage-156782>

## Stories from POLITICO Pro

### How Obamacare survived Trump 'sabotage' Back

By Paul Demko | 04/02/2018 12:22 PM EDT

Obamacare backers predicted President Donald Trump's decision to halt subsidy payments last fall would destroy the law. But six months later, the troubled insurance markets appear more stable than ever, and many Obamacare customers benefited from Trump's decision in ways the law's supporters didn't expect.

Trump's decision in October to halt Obamacare's cost-sharing reductions, which helped pay low-income customers' medical bills, prompted many insurers to hike monthly premiums by around 20 percent. What happened next, though, surprised even some health insurance experts who've studied the law for years.

Obamacare customers this year qualified for much larger premium subsidies that offset the rate hikes, enabling thousands to enroll in health plans with no monthly cost or to buy richer coverage.

"This is confusing, it is weird, it is strange," said David Anderson, a health insurance expert at Duke University. "And it destroyed a lot of knowledge that people had previously learned on the exchanges about how to shop."

It's the latest evidence that the Affordable Care Act marketplaces — which were profitable for many insurers for the first time last year — have managed to withstand Republican efforts to dismantle the law. And with a legislative package to help the insurance markets stalled in Congress, insurers and state regulators apparently have found a blueprint that could keep these markets viable for the long-term.

These seemingly perplexing changes in the marketplaces are tied to the way insurers dealt with huge premium increases resulting from the lost cost-sharing subsidies. The simplest explanation is that the law's monthly premium subsidies — a separate program not affected by Trump's decision — became much richer for low-income Americans.

Premium subsidies are tied to income, and the amount customers have to pay is capped regardless of price. In Maryland, for example, Obamacare customers received \$63.9 million in premium subsidies this January, more than double the \$29.8 million in aid they received in January 2017.

Regulators in most states required insurers to load all of the resulting premium increases onto the most popular Obamacare plans, allowing low-income customers to receive higher monthly premium subsidies.

"We decided we had to protect ourselves in spite of the [federal] government not caring about people and their needs," said John Franchini, New Mexico's superintendent of insurance. "Thank God I have a smart staff who understand health care a lot better than me."

The approach has had drawbacks though. Unsubsidized customers faced the full brunt of major premium spikes. And an analysis from the CBO last year estimated the decision to scrap the cost-sharing payments would drive up federal spending by nearly \$200 billion over a decade due to increased premium subsidies.

"I think on both sides there was a remarkable lack of knowledge about how the ACA works," said Joe Antos, a health care finance expert at the right-of-center American Enterprise Institute. "This is something that's a 'big duh' for anybody frankly who actually paid any attention over the last 10 years."

The White House says Trump eliminated the cost-sharing payments because it determined they were illegal. House Republicans sued the Obama administration in 2014, arguing that Congress never authorized the payments, and they initially prevailed in court. An appeal dating back to the Obama administration was pending when Trump opted to scrap the payments, effectively nullifying the lawsuit.

Since Obamacare repeal efforts collapsed last fall, lawmakers spent months working on bipartisan legislation that would have restored the cost-sharing payments. However, Congress failed to include an Obamacare stabilization package as part of the massive spending bill it passed last month. Though lawmakers say they're open to more negotiations, cost-sharing payments are unlikely to be restored for 2019 health plans.

No one may be happier about that than Families USA, a leading consumer advocacy group that has done a 180-degree shift since calling Trump's decision to scrap the payments the "most destructive act of health care sabotage yet." While the group believes Trump's move was motivated by his desire to damage Obamacare, it last month warned that reinstating the subsidies would mean "millions of consumers would experience significant financial harm."

Priority Health, a small health insurer in Michigan, has seen a huge migration to cheaper plans that come with no monthly cost for many, thanks to greater premium subsidies. In 2017, a third of its customers were enrolled in relatively skimpy "bronze" plans, which cover about 60 percent of a customer's medical costs. But this year, that figure jumped to more than 60 percent.

But Priority Health officials worry these customers, who'll have to pay more out of pocket for care, might avoid preventive care, potentially leading to more expensive medical needs down the road. The insurer has been calling its bronze plan enrollees to let them know they still get two free doctor visits per year.

"What we've seen is people access care differently," said company vice president Tami Hibbitts. "They make different choices. They wait because they know that first dollar is coming out of their pocket."

Meanwhile, many customers were able to sign up for coverage that provides greater protection from medical bills at the same cost as their old plans.

Wisconsin's Security Health Plan saw the number of individuals signing up for gold plans — which cover an estimated 80 percent of a patient's costs — more than quadruple. That could be a problem for the insurer because it suggests those customers expect to have greater health care needs.

"It's concerning, but it's rational consumer behavior when they're receiving those additional subsidies," said Marty Anderson, the insurer's chief marketing officer.

The rising premiums, however, have been problematic for Obamacare customers who make too much money to qualify for subsidies. They've often faced the full brunt of premium spikes.

In Wisconsin, the average premiums skyrocketed by 42 percent this year as fewer insurers sold coverage, leaving some parts of the state with just a single insurer. Obamacare enrollment dropped in the state by 18,000 people, a 7 percent decrease.

Nationwide, nearly half of counties had just a single insurer selling plans. Premiums for the most popular plans across the country jumped by an average of more than 30 percent.

Enrollment nationwide dipped by 3.7 percent this year, according to the National Academy for State Health Policy, following a similar drop in 2017. This year's sign-ups defied expectations, given GOP repeal efforts, but the figures suggest the Obamacare markets will shrink again next year.

Even so, the fallout from Trump's decision on cost-sharing payments hasn't proven nearly as catastrophic as Obamacare's supporters once predicted. It even suggests the law has a surprising resilience after eight years of legal fights and repeal efforts.

"It seemed like it allayed a lot of fear about the future of the ACA," said Shelli Quenga, who oversees Obamacare outreach programs for South Carolina's Palmetto Project. "If the insurance companies could figure out a way to make this still work, then that means that they've got skin in the game."

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## **China to retaliate with tariffs on 128 U.S. products beginning Monday [Back](#)**

By Megan Cassella | 04/01/2018 08:49 PM EDT

China is moving forward with its plan to counter President Donald Trump's new tariffs on steel and aluminum, levying duties that will take effect Monday on more than \$3 billion in U.S. exports to the country.

In a statement Sunday, the Chinese government said it would impose the retaliatory tariffs on 128 products, according to an informal translation.

China will impose a 15 percent tariff increase on goods including American fruit and nuts and add a 25 percent tariff on pork, recycled aluminum and other goods, the government said.

The move to impose the duties comes just over a week after the Chinese Commerce ministry had announced it was considering tariffs on the goods. Just over a week later, those tariffs are taking effect.

The move is expected to lead to escalating tensions between the two large trading nations, leading many to worry that American farmers will be casualties in a tit-for-tat trade war.

The U.S. shipped more than \$1 billion of pork products to China last year, making it the No. 3 destination for exports after Japan and Mexico. The U.S. was China's top supplier of apples, cherries, walnuts and almonds.

Beijing argued in the statement Sunday that it would be imposing the duties "in order to safeguard China's interests and balance the losses caused by" the steel and aluminum tariffs, which took effect late last month.

It will move forward with the retaliatory measures under the World Trade Organization's safeguards agreement, which allows a country, after a period of consultation, to put in place tariffs to compensate for another country's export restrictions.

While the Trump administration has said the steel and aluminum tariffs are necessary to protect national security, Beijing rejected that argument in its statement and said they ran afoul of WTO rules.

China's responses, meanwhile, are "legitimate measures ... to use the rules of the World Trade Organization and safeguard its interests," the statement said.

More tariffs between the two countries are possible in the near future. In March, Trump unveiled another set of tariffs, which specifically target some \$60 billion in Chinese exports in response to what the White House has described as policies that force American tech companies to cough up intellectual property in order to access the Chinese market.

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### **Pork producers hope for Trump deal to save China market [Back](#)**

By Doug Palmer | 04/02/2018 01:43 PM EDT

The U.S. pork industry hopes that President Donald Trump can strike a deal with China to keep U.S. pork exports flowing to the industry's second-largest overseas market.

A spokesman for the National Pork Producers Council made the comment after China announced over the weekend that it was raising tariffs on about \$3 billion worth of U.S. exports, including pork, in retaliation for Trump's decision to hike tariffs on steel and aluminum to protect U.S. national security.

The U.S. pork industry exported \$1.1 billion of pork products to China last year out of total exports of about \$6.5 billion, said Jim Monroe, a spokesman for the NPPC.

"We were disappointed to see the tariffs implemented," Monroe said in response to China's action. But "hopefully the United States and China can resolve their differences and we can return to more favorable access to an important market."

In that regard, the recently renegotiated free trade deal with South Korea gives the NPPC hope that the Trump administration can work out a deal with Beijing, he said.

If not, the long-term loss of sales to the Chinese market could be a big blow to an industry that depends heavily on exports to maintain profitability.

"The average value of a hog last year was \$149 and of that, more than \$53 was driven by exports," Monroe said. "So, any trade restrictions like this are a negative outcome for pork producers."

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### **California citrus growers fear the pain of new Chinese tariffs [Back](#)**

By Doug Palmer | 04/02/2018 02:49 PM EDT

California citrus producers are bracing for lower prices after China announced over the weekend that it was imposing tariffs on U.S. oranges, lemons and other farm and industrial products in retaliation for President Donald Trump's new tariffs on steel and aluminum.

"The decision by the Chinese government to levy exorbitant tariff increases on U.S. produce will surely have a direct impact on California citrus producers," California Citrus Mutual President Joel Nelsen said in a statement. "Family farmers in our industry will suffer from the economic fallout unless we can find alternative markets for California's navel and Valencia oranges and lemons."

Nelsen and other Citrus Mutual officials will be in Washington this week on a previously scheduled trip that now will focus heavily on the measures put in place by Beijing.

China's demand for foreign oranges has risen rapidly in recent years, growing from 88,000 metric tons in the 2012-13 marketing year to an estimated 400,000 metric tons in 2017-18, according to the USDA's most recent [citrus trade report](#).

But even before China's decision to impose a new 15 percent tariff, total U.S. orange exports were forecast to decline to 520,000 metric tons in 2017-18, from 609,000 last marketing year.

That's partly the result of unfavorably hot weather in California, which reduced the size of the crop, USDA said. China's own orange harvest is expected to be higher this year.

U.S. lemon and lime exports are also expected to decline slightly in 2017-18 to 105,000 metric tons as a result of a smaller U.S. crop and increased competition from other suppliers like Argentina and Mexico, USDA said.

Apples growers, many of them based in Washington state, will also feel the impact of higher Chinese tariffs.

"Profit margins for apple growers are razor-thin or nonexistent, so anything that threatens access to our sixth largest export market makes us hope both sides can come to the table and work hard for an acceptable solution," USApple President and CEO Jim Bair said.

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**China-Trump trade fight spurs market worries** [Back](#)

By Megan Cassella and Doug Palmer | 04/02/2018 01:57 PM EDT

The latest [action](#) in the trade fight involving China and the U.S. is sending a fresh shockwave through U.S. markets, which have been worried for months about President Donald Trump's tough talk on trade.

The move is also causing alarm among agricultural groups and some farm-state politicians who [warn that American farmers](#) will be the first to suffer from the crossfire between Beijing and Washington.



"This is a tax on American farmers, brought about by protectionist trade policies," former U.S. Ambassador to China Max Baucus, who now co-chairs the Farmers for Free Trade coalition, said in a statement Monday. "American farmers appear to be the first casualties of an escalating trade war."

Beijing escalated the war of tariffs between China and the U.S. when it announced it would be moving forward with duties on \$3 billion in U.S. exports on items like pork, wine and fruit as of Monday.

The stock markets on Monday fell sharply in the wake of the trade news as well as other factors that dragged down tech stocks. The Dow Jones Industrial Average ended the day down about 2 percent, or 450 points, to 23,644.19, while the broader Standard & Poor's 500 index fell more than 2.2 percent to 2,581.88. Prices on lean hog futures for the May contract ended down 4.4 percent for the day and are off 20 percent since January.

Analysts from Moody's Investors Service said escalating trade tensions sparked by tariffs from the U.S. has the potential to dampen an otherwise positive global economic growth outlook. The announcement came during a quarterly teleconference held with investors last week.

China's duties will hit 128 U.S. products, a bulk of them agricultural. Nearly \$1 billion in U.S. exports will be hit with 15 percent tariffs, including 120 products covering fresh fruit, dried fruits and nuts, wine, modified ethanol, American ginseng and seamless steel pipes. Another group of U.S. goods, valued at nearly \$2 billion, are now facing another 25 percent levy, including on pork and recycled aluminum.

China said in a statement that it was imposing the new tariffs in response to Trump's decision last month to impose tariffs of 25 percent on steel imports and 10 percent on aluminum in the name of national security.

The tariffs on the \$3 billion in U.S. exports may be a small part of the \$19 trillion American economy, but the added burden will be hitting farmers who are already struggling with low commodity prices and increased global competition.

"Moving forward with more far-reaching tariffs that result in retaliation and threaten to dismantle critical trade deals will have a crushing effect on America's ability to create jobs here at home and feed families around the world," said Casey Guernsey, a former member of the Missouri House who leads the Retaliation Hurts Rural Families initiative organized by the group Americans for Farmers and Families.

Of all the ag products targeted, pork and pork variety meats will be hardest-hit by the new tariffs. China is the second-largest export market by volume for U.S. pork and pork variety meats, with the U.S. sending nearly \$1.1 billion worth of the products over last year.

The U.S. Meat Export Federation, the industry's overseas marketing arm, warned Monday that the tariffs will have an "immediate impact" on U.S. producers and marketers as well as Chinese consumers. But Dan Halstrom, the group's president and CEO, added that he remains "hopeful that the additional duties can be rescinded quickly."

Several other industry groups that will suffer as a result of China's action are urging the U.S. and China to reach some sort of deal to remove or at least soften the tariffs.

The Institute of Scrap Recycling Industries, for one, said it "had been hopeful" that discussions could have changed China's mind on the tariffs, which will affect nearly \$1.2 billion in U.S. exports of scrap aluminum to China.

And the U.S. Chamber of Commerce on Monday urged both governments "to the negotiating table as soon as possible."

"We need near-term progress on the underlying Chinese industrial policies and market access restrictions that are tilting the playing field against U.S. companies and fueling overcapacity," Jeremie Waterman, president of the U.S. Chamber's China Center, said in a statement to POLITICO. "Unilateral tariffs imposed by either government will do more harm than good."

Neither the White House nor the Office of the U.S. Trade Representative would say whether meetings are taking place to address the impasse.

The new tariffs come just over a week after China had first warned that it was considering such a move if officials were not able to reach a solution with their U.S. counterparts through a dialogue at the World Trade Organization. Beijing launched that trade dispute at the WTO a week ago and indicated it would engage in a 30-day consultation period — but the decision to move forward with tariffs before the end of that window indicates the two sides were unable to make any progress on a solution.

Trade experts also warned that the retaliation could ramp up after Trump moves forward with a second set of tariffs and import restrictions on some \$60 billion in Chinese exports.

The Trump administration is expected this week to publish a list of at least \$50 billion worth of Chinese technology products that could be hit with U.S. tariffs in response to alleged Chinese intellectual property theft and forced technology transfers. So China's retaliation in the steel and aluminum dispute is probably intended to send a message in the technology case, one longtime China observer said.

"The Chinese are notorious for 'pre-emptive retaliation,'" the source said. "They often do not wait and wish to show strength quickly to try to deter future action."

California Citrus Mutual, an advocacy organization representing citrus growers in the state, blamed the new tariffs on "insufficient time" being given to focus on "constructive talks."

"While our administration focuses on those business sectors requiring attention, the Chinese administration has chosen to expand the discussion to include the agricultural industry," said the citrus group's president, Joel Nelsen. "Now Chinese consumers and California citrus producers are innocent parties to a trade debate."

The White House did criticize China's move to impose duties.

"China's subsidization and continued overcapacity is the root cause of the steel crises," White House spokeswoman Lindsay Walters said in a statement on Monday. "Instead of targeting fairly traded U.S. exports, China needs to stop its unfair trading practices which are harming U.S. national security and distorting global markets."

The latest tensions show little signs of de-escalating. Cui Tiankai, China's ambassador to the U.S., had said last month that China wasn't afraid of a trade war.

"We will certainly fight back and retaliate," he said. "If people want to play tough, we will play tough with them and see who will last longer."

*Blake Paterson contributed to this report.*

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## **White House criticizes China for trade retaliation in steel dispute** [Back](#)

By Doug Palmer | 04/02/2018 10:52 AM EDT

The White House criticized China on Monday for implementing plans to retaliate on about \$3 billion worth of U.S. agricultural and other products in response to new steel and aluminum tariffs imposed by President Donald Trump.

"China's subsidization and continued overcapacity is the root cause of the steel crises," White House spokeswoman Lindsay Walters said in a statement. "Instead of targeting fairly traded U.S. exports, China needs to stop its unfair trading practices which are harming U.S. national security and distorting global markets."

[Beijing announced](#) overnight that it was moving ahead with a 15 percent tariff increase on goods including American fruit and nuts and a 25 percent additional tariff on pork, recycled aluminum and other goods.

The action comes as the Trump administration is expected this week to publish a list of at least \$50 billion worth of Chinese technology products that could be hit with U.S. tariffs in response to alleged Chinese intellectual property theft and forced technology transfers.

Consequently, China's retaliation in the steel and aluminum dispute is probably intended to send a message in the technology case, one long-time China observer said.

"The Chinese are notorious for 'pre-emptive retaliation,'" the source said. "They often do not wait and wish to show strength quickly to try to deter future action."

The US-China Business Council, which represents companies that do business in China, issued a statement urging "both governments to get back to the table to work out an appropriate solution to these issues. Unilateral tariffs imposed by either government will do more harm than good to address global concerns about overcapacity."

Former U.S. Ambassador to China Max Baucus, who now co-chairs the Farmers for Free Trade coalition, blamed the Trump administration provoking China into a trade action that will hurt American farmers.

"American farmers appear to be the first casualties of an escalating trade war. With farm incomes already declining, farmers rely on export markets to stay above water," Baucus said. "These new tariffs are a drag on their ability to make ends meet."

Baucus also warned that China's retaliation on U.S. farmers in the intellectual property dispute could be broader and deeper. "Now is the time to deescalate both the trade rhetoric and actions that have brought us to a point where American farmers are being targeted," he said.

Trump has somewhat backed off his initial plan to impose a 25 percent tariff on steel and 10 percent tariff on aluminum by exempting Canada, Mexico, the European Union, Australia, Argentina and Brazil until May 1 to provide time to reach some other way of addressing U.S. national security concerns about the import.

In that context, South Korea recently agreed to a quota on its steel exports to the United States. However, it remains unclear whether the EU and others will agree to a similar measure or if they could potentially join China in retaliating against the Trump administration trade action.

*Megan Cassella contributed to this report.*

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## **EPA will revise Obama-era auto standards** [Back](#)

By Alex Guillén and Emily Holden | 04/02/2018 02:15 PM EDT

EPA will revise auto emissions regulations set by the Obama administration, according to a set of agency talking points reviewed by POLITICO.

"Based on EPA's review and analysis of the comments and information received, and the Agency's own analysis, the Administrator believes that the current GHG emission standards for MY 2022-2025 light-duty vehicles are not appropriate and should be revised," Tate Bennett, associate administrator for public engagement and environmental education, wrote in an email this morning to supportive groups outside the agency.

The changes "will ensure that auto-manufacturers can make cars that consumers both want and can afford," Bennett's email said. "They will also treat all advanced vehicle technologies the same, including the potential natural gas vehicles and the role of high-octane fuels."

The move was widely expected following automakers' request for the Trump administration revisit the rules.

Those opposed to changing the standards, including California regulators and environmentalists who helped create the original rules, say weakening them will cost consumers more in the long run because of higher fuel usage. California is authorized to enforce higher standards inside its borders and in a dozen other states, raising the threat of automakers facing two sets of requirements.

Standards for model year 2022-2025 vehicles were set by a 2012 rule that also directed EPA to conduct a "midterm" review. In the event automakers would not be able to reach those later standards, EPA could revise them.

EPA Administrator Scott Pruitt is expected to formally announce the decision on Tuesday.

**WHAT'S NEXT:** Pruitt's determination triggers a new round of notice-and-comment rulemaking to revise the standards for 2022-2025 model year cars and light trucks. A proposal describing the changes could come as soon as this summer, but the timeline is still unclear.

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## **EPA releases Pruitt's decision to revise car standards** [Back](#)

By Alex Guillén | 04/02/2018 04:38 PM EDT

EPA has released the 38-page determination from Administrator Scott Pruitt that the model year 2022-2025 standards are too strong and must be revised.

The "current standards are based on outdated information, and ... more recent information suggests that the current standards may be too stringent," according to the pre-publication notice signed by Pruitt today.

Pruitt's determination also formally withdraws the one issued by Gina McCarthy in the final days of the Obama administration.

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### **Pruitt: California can't 'dictate' car rules** [Back](#)

By Alex Guillén | 04/02/2018 02:53 PM EDT

EPA Administrator Scott Pruitt today stopped short of announcing plans to revoke California's waiver to enforce more stringent auto emissions standards, but indicated he will pressure the state to fall in line behind federal rules.

"Cooperative federalism doesn't mean that one state can dictate standards for the rest of the country," Pruitt said in a press release formally announcing his decision to revise rules for model year 2022-2025 vehicles.

"EPA will set a national standard for greenhouse gas emissions that allows auto manufacturers to make cars that people both want and can afford — while still expanding environmental and safety benefits of newer cars," Pruitt continued. "It is in America's best interest to have a national standard, and we look forward to partnering with all states, including California, as we work to finalize that standard."

California regulators have indicated they are unlikely to agree to any changes to the program unless EPA agrees to issue standards continuing to require more efficient vehicles for model years 2026-2030.

Pruitt also took a swipe at the Obama administration, which in its own January 2017 determination said the current rules were achievable.

"The Obama EPA's determination was wrong," Pruitt said. "Obama's EPA cut the midterm evaluation process short with politically charged expediency, made assumptions about the standards that didn't comport with reality and set the standards too high."

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### **California ready to sue if Pruitt goes after car waiver** [Back](#)

By Alex Guillén | 04/02/2018 04:13 PM EDT

California Attorney General Xavier Becerra said today he is ready and willing to take EPA to court if the agency tries to revoke the state's special waiver to enforce the existing auto emissions standards, as Administrator Scott Pruitt hinted he may do if the state does not go along.

"We're ready to file suit if needed to protect these critical standards and to fight the Administration's war on our environment," Becerra said in a statement.

EPA in 2009 granted California a waiver under the Clean Air Act to enforce more stringent auto emissions standards through model year 2025 vehicles. The 2012 regulation that created national standards included an agreement with California that any car that met the new standards would be deemed to have met California's as well.

But loosening the national standards would break that agreement, and California could enforce the higher standards within its own border. Another 12 states also follow California's rules, including New York, New Jersey and Pennsylvania. State officials have said they are optimistic California could win in court given its special treatment under the Clean Air Act.

California Air Resources Board Chairwoman Mary Nichols echoed Becerra's sentiment.

"This is a politically motivated effort to weaken clean vehicle standards with no documentation, evidence or law to back up that decision," she said. "This decision takes the U.S. auto industry backward, and we will vigorously defend the existing clean vehicle standards and fight to preserve one national clean vehicle program."

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#### **Trump tweet seen as boost for Sinclair deal** [Back](#)

By Margaret Harding McGill and John Hendel | 04/02/2018 05:37 PM EDT

President Donald Trump's tweet in support of Sinclair Broadcast Group leaves little question his administration will approve the conservative TV empire's bid for Tribune Media, according to the company's critics.

Trump came to the broadcaster's defense after a viral video showing dozens of TV anchors at Sinclair-owned stations reciting the same Trump-like script bashing the media for spreading "fake news."

While the president didn't mention Sinclair's pending \$3.9 billion acquisition of Tribune, opponents of the deal say Trump's comments send a message to regulators now reviewing the transaction.

"If anybody didn't understand that the green light was on for the Sinclair deal, I think it's crystal clear now," said Michael Copps, a former Democratic FCC commissioner who now serves as an adviser to public interest group Common Cause.

The Justice Department and the Federal Communications Commission are reviewing Sinclair's bid to buy Tribune's stations, which would allow the company, known for injecting must-run conservative segments into local stations' programming, to reach nearly three out of every four households in the U.S.

The reviews, however, have taken longer than expected, with Sinclair revising the deal several times and committing to sell off some of the TV stations it wanted to buy after discussions with regulators.

Trump had steered clear of talking about Sinclair, but that changed Monday, when he tweeted that it's "so funny" to see criticism of Sinclair from other media outlets, arguing that the company is "far superior to CNN and even more Fake NBC, which is a total joke."

Opponents of Sinclair pounced on what they called evidence of Trump bias.

"At a moment when millions of people are waking up to what it looks like when Sinclair comes in and controls your local TV station, Trump is rushing to their defense, just like they've rushed to his defense a countless number of times," said Craig Aaron, president and CEO of consumer advocacy group Free Press.

A Sinclair representative declined to comment on Trump's tweet, but the company said its promotional announcements on local news are meant to differentiate its news programming from less reliable sources of information.

"We aren't sure of the motivation for the criticism, but find it curious that we would be attacked for asking our news people to remind their audiences that unsubstantiated stories exist on social media, which result in an ill-informed public with potentially dangerous consequences," Scott Livingston, Sinclair's senior vice president of news, said in a statement.

Sinclair has faced criticism over reports that it gave favorable treatment to Trump while airing negative stories about Hillary Clinton during the 2016 election.

POLITICO reported shortly after the election that Trump son-in-law and adviser Jared Kushner boasted that the campaign had struck a deal with Sinclair for better media coverage. (Sinclair has disputed the characterization, saying it was an arrangement for extended sit-down interviews offered to both candidates.)

FCC watchers say the agency's actions under the Trump administration have benefited Sinclair. They point to Chairman Ajit Pai's decision last year to revive a regulatory loophole, known as the UHF discount, that allows Sinclair to expand its footprint without vastly exceeding federal limits on media ownership.

Under Pai, the FCC also got rid of regulations that required broadcast companies to maintain studios in local communities and prevented them from owning more than one top-rated TV station in a market — changes also seen as helping Sinclair.

"One way or another, Chairman Pai is going to approve this deal," said Andrew Schwartzman, an attorney with the Institute for Public Representation at Georgetown University Law Center. "He doesn't need the president to encourage him."

Chris Ruddy, CEO of the conservative news network Newsmax and a Trump confidante, said he agrees with Sinclair's stance on the dangers of fake news but said he's concerned about the policy changes by the FCC that will allow the broadcaster to grow larger.

"The FCC has essentially become a subsidiary of the Sinclair Broadcasting company and is rubber stamping a lot of things to help them package and homogenize news and have a huge national reach," Ruddy said in an interview. "I don't think it's good for free press. It creates a very dangerous precedent. I believe the actions the FCC has taken literally stink."

Ruddy met with Trump recently but declined to say whether he discussed Sinclair.

"I can tell you the president likes Sinclair and thinks they were very fair to him during the election, and I agree with that sentiment," Ruddy said. "But I think that the president was elected because there were many station owners in local markets in red states, not just Sinclair."

Some antitrust experts dismissed the significance of Trump's bluster in the regulatory reviews.

Trump's tweets about his personal likes and dislikes are "pretty much irrelevant," said Allen Grunes, an attorney at Konkurrenz Group who spent more than a decade at the Justice Department's antitrust division. "My experience at DOJ and later on is that elected officials expressing their opinions doesn't impact the outcome of the antitrust review."

But Trump's accusations of unfair coverage have become an issue in another media deal: AT&T-Time Warner. The president's frequent bashing of Time Warner-owned CNN has shadowed that merger, which the Justice Department is seeking to block. The judge in the case, though, has so far rejected attempts to explore potential White House influence over the government's antitrust review.

More broadly, the president's pro-Sinclair message guarantees that the issue will remain front and center for Democrats, particularly as the midterm elections approach.

"It is a blatant conflict of interest for this President to help his campaign contributors become bigger and bigger, while media choice and diversity becomes smaller and smaller," Sen. Ed Markey (D-Mass.) said in a statement. "The Department of Justice should reject this acquisition, and the FCC should reform ownership rules that make it possible."

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**Kushner: We struck deal with Sinclair for straighter coverage** [Back](#)

By Josh Dawsey and Hadas Gold | 12/16/2016 05:35 PM EDT

Donald Trump's campaign struck a deal with Sinclair Broadcast Group during the campaign to try and secure better media coverage, his son-in-law Jared Kushner told business executives Friday in Manhattan.

Kushner said the agreement with Sinclair, which owns television stations across the country in many swing states and often packages news for their affiliates to run, gave them more access to Trump and the campaign, according to six people who heard his remarks.

In exchange, Sinclair would broadcast their Trump interviews across the country without commentary, Kushner said. Kushner highlighted that Sinclair, in states like Ohio, reaches a much wider audience — around 250,000 listeners — than networks like CNN, which reach somewhere around 30,000.

"It's math," Kushner said according to multiple attendees.

But Sinclair and other networks said such a deal is nothing nefarious or new - just an arrangement for extended sit-down interviews with both candidates, one many campaigns have done in previous years to get around the national media and directly to viewers in key states.



Scott Livingston, vice president of news at Sinclair, said the offer for extended interviews with local anchors was made to both candidates. Trump did a handful of interviews, while Sen. Tim Kaine did a few as well, though Hillary Clinton did not.

"Our promise was to give all candidates an opportunity to voice their position share their position with our viewers. Certainly we presented an opportunity so that Mr. Trump could clearly state his position on the key issues," Livingston said. "Our commitment to our viewers is to go beyond podium, beyond the rhetoric. We're all about tracking the truth and telling the truth and that's typically missing in most political coverage."

A Trump spokesman said the deal included the interviews running across every affiliate but that no money was exchanged between the network and the campaign. The spokesman said the campaign also worked with other media outlets that had affiliates, like Hearst, to try and spread their message.

Barbara Maushard, senior vice president for news at Hearst Television said in a statement "Any suggestion that Hearst Television cut any deal with political candidates is categorically false and absurd."

"It was a standard package, but an extended package, extended story where you'd hear more directly from candidate on the issue instead of hearing all the spin and all the rhetoric," Livingston said.

Clinton campaign spokesman Brian Fallon said they had nothing to add to Sinclair's explanation.

Sinclair, a Maryland-based company, has been labeled in some reports as a conservative-leaning local news network. Local stations in the past have been directed to air "must run" stories produced by Sinclair's Washington bureau that were generally critical of Obama administration and offered perspectives primarily from conservative think tanks, The Washington Post reported in 2014.

A Kushner spokeswoman declined to comment on his remarks, made at an off-the-record meeting in the Morgan Stanley Cafeteria for the Partnership for New York City, a business group, and referred questions to the campaign.

Kushner, dressed in a suit and sneakers, told the business executives that the campaign was upset with CNN because they considered its on-air panels stacked against Trump. He added that he personally talked with Jeff Zucker about changing the composition of the panels but Zucker refused. He repeatedly said in the panel that CNN wasn't "moving the needle" and wasn't important as it once was, according to three of the people present.

The campaign then decided not to work as closely with CNN, and Trump ramped up his bashing of the cable network.

Two people present said that they were surprised how much Kushner talked about CNN. "He kept going on and on about it," one business executive said.

He also told the crowd that Google and Facebook are now more powerful, and that The New York Times and CNN aren't as powerful.

A CNN spokesperson declined to comment.

Kushner also said that he had learned far more about the country by traveling with Trump and was now a different person, calling the thousands of people who would show up to Trump rallies "amazing Americans."

"Here he is with 400 elites, CEOs of the banks, those are his people. He's among his people, but he's speaking this Trump-like language," one attendee said.

*Joe Pompeo contributed reporting from New York.*

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## **How the White House grounded Shuster's FAA bill** [Back](#)

By Lauren Gardner and Kathryn A. Wolfe | 04/02/2018 05:08 AM EDT

President Donald Trump threw his weight last summer behind a dramatic makeover of air traffic control in the U.S. — saying the plan to break up the Federal Aviation Administration and spin off thousands of its employees would rescue the country from "an ancient, broken, antiquated, horrible system that doesn't work."

"It's time to join the future," Trump said in a [June speech](#) in the White House's East Room, where House Transportation Chairman [Bill Shuster](#) (R-Pa.), a longtime champion of the air traffic control overhaul, sat in the first row. The president pledged that "if we adopt these changes, Americans can look forward to cheaper, faster and safer travel."

But less than 10 months later, the plan — supported by the major airlines but opposed by private plane and business jet owners, rural interests and some key Senate Republicans — is dead. And sources tell POLITICO that Trump's lack of enthusiasm killed it.

Shuster asked Trump during a Feb. 14 meeting to help him sway about a dozen wavering Republican lawmakers to support the legislation, even providing a list of names, according to two people familiar with the meeting's details. After a week of silence, White House officials broke the news to Shuster that no help was coming — and Trump no longer endorsed the plan.

Without the White House to help cajole and twist arms, Shuster decided to pull the plug on the bill, [H.R. 2997 \(115\)](#), those sources said.

"I was told that Shuster was very upset and that he decided at that point to — he probably couldn't garner the votes to go back to leadership and say, 'I have the votes to move my bill,'" said one of the people familiar with the matter. "My understanding is that he had asked [for help] earlier," and got a call back "to say that that wasn't going to happen."

The fate of Shuster's air traffic control push is an object lesson in how even Trump's vocal support for an ambitious piece of legislation doesn't guarantee that the White House will do the hard work of cajoling lawmakers to vote for it. That dynamic — also seen in the White House's shifting positions on immigration, health care and last year's mammoth tax bill, [H.R. 1 \(115\)](#) — could also spell trouble for Trump's other proposals, including his stymied plan to gin up \$1.5 trillion in government and private infrastructure investments.

It's unclear why the administration pulled the rug from under the FAA bill, which the White House had also embraced in two budget proposals. But a third airline lobbyist said the White House had never put any real effort into pushing for the legislation behind the scenes, which was needed to shift the political dynamics that already had been at play for over a year.

Shuster laid the blame for the FAA bill's demise squarely at Trump's feet.

"My Democratic opponents, we were gonna get some of them on board; Republicans in the House, a number of them that wouldn't go with me," he told reporters on March 14. "Leadership was great with it; in the Senate we have Republicans [who opposed it]. And then for some reason, at the eleventh hour, the White House decided somewhere there, they decided they weren't going to be for it."

Asked about why Trump seemingly reversed his support, a White House aide said he still "supports transforming the ATC system" but didn't address Shuster's proposal specifically.

The bill was to be a legacy for Shuster, who is retiring from Congress next year. He has pushed for years for a "transformational" effort that would split up the FAA, removing air traffic control operations and its roughly 15,000 controllers and transferring them into a newly created private, nonprofit corporation led mostly by representatives of the aviation industry. As envisioned by Shuster's bill, that board would have essentially set prices and practices, under the FAA's oversight, for the way the air traffic control is performed in the U.S. — an enormous and consequential change.

It's not the first time anyone has attempted such a thing — former President Bill Clinton had proposed a similar arrangement — but it is the closest anyone has come to making it happen. But in the end, it wasn't close enough, tanked by strong opposition from owners of private planes and business jets, lawmakers' reluctance to cede direct oversight of air traffic control, and misgivings about cracking open the FAA in a time when U.S. commercial aviation is the safest it's been in the history of flight.

Now, his legacy bill in tatters, Shuster has positioned himself as Trump's point man in pushing Trump's infrastructure package forward — another goal that may depend on a mercurial White House.

Trump needs to be on the front lines pushing the effort, Shuster said when asked whether he was concerned about the possibility of a repeat with an infrastructure package.

"There's not a lot of support in the Congress for what they put forward, so somewhere there's got to be a meeting of the minds if he wants to do it," Shuster said. "And he really needs to get out there and lead."

Shortly before the FAA bill tanked, the industry began buzzing again in February that Shuster was trying to bring the bill up for a vote in the House. It had been widely believed that Shuster lacked the votes to win passage, but the latest push kicked up a whirlwind of speculation that he'd been able to secure the votes of the handful of recalcitrant Republicans he needed.

It was not to be, however.

Despite the loss, Shuster said he's "very proud" of how far he was able to go with the legislation, which the Transportation Committee approved with no Democratic support.

"I believe someday, some chairman of this committee, and some president and some Senate, will pass this, and we will do what the rest of the world is doing and America will be better off for it," Shuster said.

*Brianna Gurciullo contributed to this report.*

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## Did Shulkin get fired or resign? This is why it matters. [Back](#)

By Andrew Restuccia | 03/31/2018 10:50 AM EDT

The White House is now asserting that recently departed Veterans Affairs Secretary David Shulkin resigned. Shulkin has made it clear in his public comments that he was forced out.

While Washington often wraps firings in the verbal cloak of a resignation, the distinction this time could have far-reaching implications that could throw the Department of Veterans Affairs, the second-largest federal agency, into further disarray.

In announcing the removal of Shulkin as VA secretary, Trump tapped Defense Department official Robert Wilkie as the acting leader of the department, bypassing Shulkin's deputy, who was next in line to succeed him. That decision has reignited a debate among legal experts about the president's ability to hand-pick replacements for ousted Cabinet secretaries.

The debate centers on vague language in the Federal Vacancies Reform Act of 1998, which gives the president broad authority to temporarily fill a vacancy at a federal agency with an acting official if the current office holder "dies, resigns, or is otherwise unable to perform the functions and duties of the office."

But some legal experts note that the law does not explicitly grant that authority to the president in the case of firings. That could make Trump's decision to appoint Wilkie, the under secretary of defense for personnel and readiness, as acting VA secretary a potential test of the president's authorities under the act.

And it means that any formal actions Wilkie takes as acting secretary could face a legal challenge that might stall sorely needed reforms and modernizations at the troubled agency.

When POLITICO asked the White House for comment about the potential legal issues surrounding Shulkin's replacement, spokeswoman Lindsey Walters said in a statement, "Secretary Shulkin resigned from his position as Secretary of the Department of Veterans Affairs."

Walters' comment is in sharp contrast with the well-established narrative that Trump fired Shulkin. Until now, the White House has made little effort to correct the many press accounts saying Shulkin was removed.

The White House declined to elaborate on the exact circumstances surrounding Shulkin's ouster or offer any evidence to support the assertion. A VA spokesman referred a request for comment to the White House.

But a person familiar with Shulkin's dismissal strongly disputed that Shulkin resigned, noting that he did not submit a resignation letter. Shulkin's removal happened so quickly, the person said, that he was never given the opportunity to return to his office or address VA employees.

Shulkin, for his part, has publicly criticized the White House for its handling of his removal. During an interview with MSNBC this week, he said Trump never mentioned his plans to push him out during a phone call on Wednesday. White House chief of staff John Kelly subsequently informed him of the president's intention later that afternoon.

Under normal circumstances, the VA's No. 2, Deputy Secretary Thomas Bowman, would have stepped in as secretary after Shulkin departed. But Trump and many in the White House have clashed with Bowman, believing him to be opposed to efforts to move toward more privatized veterans health services.

Wilkie could serve as acting VA chief for several months while Trump's nominee to permanently lead the department, White House physician Ronny Jackson, awaits confirmation in the Senate.

Any significant policy decision Wilkie makes during that time could prompt a challenge from an injured party claiming that Wilkie doesn't have the legal authority to lead the department in an acting capacity.

The succession question could also reemerge if Trump fires Attorney General Jeff Sessions and seeks to install an acting AG from another agency instead of Deputy Attorney General Rod Rosenstein. Rosenstein has been on the receiving end of Trump's ire in recent months.

Trump signed an executive order last year reorganizing the order of succession at the Justice Department.

A challenge to Trump's decision to appoint Wilkie would be unprecedented, according to experts. But some added that it could be an increasingly attractive option for outside groups who want to overturn the Trump administration's policy moves.

"It's an open question. There are ways to read the statute both ways," said Stephen Vladeck, a professor at the University of Texas School of Law. "There's reason to wonder if Congress would have wanted to give the president such broad ability to fill a vacancy he creates."

Even if the VA succession goes unchallenged, Vladeck said picking an acting official outside the traditional line of succession could be a "dry run" for similar maneuvers at other agencies, including the Justice Department.

Anne Joseph O'Connell, a law professor at the University of California, Berkeley, who specializes in the Vacancies Act, said, "It's conceivable that somebody could bring a challenge to a decision made by the acting secretary. But it's really hard for me to see a court saying the act doesn't apply."

O'Connell said she believes the law does in fact apply to firings and she listed several potential hurdles to mounting a serious legal challenge. Among them: finding somebody who has been injured by a decision made by the acting secretary and convincing a court that the law intended to stop presidents from picking acting secretaries after a firing. Another potential difficulty: figuring out a way to differentiate between a firing and a forced resignation.

But there are potential avenues for a lawsuit. Shulkin was fired before he could finalize a \$16 billion electronic health records contract. If Wilkie signs the contract as acting administrator, a party that claims to be injured by the contract could bring a court challenge, O'Connell noted.

The Justice Department, for its part, has suggested that firings are applicable under the Vacancies Act. In 1999 guidance issued shortly after the act was signed into law, DOJ acknowledged that the "full range" of what would constitute a vacancy under the act is "unspecified." But the guidance noted that senators mentioned the issue of firing when debating the legislation.

"In floor debate, Senators said, by way of example, that an officer would be 'otherwise unable to perform the functions and duties of the office' if he or she were fired, imprisoned, or sick," the guidance says.

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## White House appears to shift explanation on whether Shulkin resigned or was fired [Back](#)

By Andrew Restuccia | 04/02/2018 01:24 PM EDT

The White House appears to be shifting its explanation about the departure of former Veterans Affairs secretary David Shulkin, now saying he was offered "the opportunity to resign" after previously saying that he "resigned from his position."

The changing narrative comes as Shulkin has refused to go quietly, saying he was fired and accusing the White House of politically knifing him.

"I came to Washington with the commitment to make our system work better for veterans. That's the commitment that I went to work every day. I continue to feel strongly about that. There was no reason why I would resign," Shulkin said in an interview on CNN on Monday, adding that he was fired as a result of Trump's tweet last week announcing his replacement.

The dispute raises the stakes in an obscure, but potentially consequential debate over President Donald Trump's ability to appoint Shulkin's replacement. Trump bypassed Shulkin's deputy when naming his interim successor, which potentially ran afoul of the Federal Vacancies Reform Act of 1998. That law only gives the president broad authority to temporarily fill a vacancy at a federal agency with an acting official if the current office holder "dies, resigns, or is otherwise unable to perform the functions and duties of the office."

On Friday, White House deputy press secretary Lindsay Walters said in a statement, "Secretary Shulkin resigned from his position as Secretary of the Department of Veterans Affairs."

But on Monday, White House director of strategic communications Mercedes Schlapp said during an interview on Fox News that White House chief of staff John Kelly gave Shulkin an "opportunity to resign" from the job.

"General Kelly called Secretary Shulkin and gave him the opportunity to resign. Obviously the key here is that the president has made a decision," Schlapp said. "He wanted a change in the Department of Veterans Affairs. He felt it was time."

Schlapp was then pressed by Fox News reporter Abby Huntsman, who said, "So he didn't resign. So we can clear that up. It was more of a decision made by the president. He knew a change needed to be made and he made that change."

Schlapp then replied, "It was as I said, General Kelly offered him the opportunity to resign. At this point the president said it was time to move on in terms of Veterans Affairs. He thanks Secretary Shulkin for his service."

A White House spokeswoman did not respond to a request for comment about the apparent discrepancy.

Shulkin and the White House had been at odds for months over whether to move toward wider privatization of veterans' health care — a move Shulkin opposed. He also got in hot water over a VA inspector general report that accused Shulkin and his wife of improperly accepting Wimbledon tickets and using staff to arrange sightseeing visits during a business trip to Denmark and England last summer.

Shulkin has since made a series of media appearances, saying the White House did not allow him to defend himself and treated him unfairly. He also is now stating that he did not and would not have resigned.

The back-and-forth stemmed from a Saturday POLITICO story detailing the potential complications of Trump's decision to appoint Defense Department official Robert Wilkie as the acting leader of the department, bypassing Shulkin's deputy, who also has a rocky relationship with the White House.

Some legal experts note that the Vacancies Act does not explicitly grant the president authority to hand-pick replacements in the case of firings.

That could make Trump's decision to appoint Wilkie, the under secretary of defense for personnel and readiness, as acting VA secretary a potential test of the president's authorities under the act. And it could lead to potential legal challenges if Wilkie stays on as acting secretary for an extended period of time while the Senate considers his nominee to permanently hold the position, White House physician Ronny Jackson.

*Louis Nelson contributed to this report.*

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